THE BOMBAY SALES OF MOTOR SPIRIT TAXATION ACT, 1946.

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*BOMBAY ACT No. VI OF 1946.[1]

[THE BOMBAY SALES OF MOTOR SPIRIT TAXATION ACT, 1946.]

[*8th March 1946.*]

Amended by Bom. 9 of 1948.

An Act to provide for the levy of a tax on the sales of motor spirit in the Province of Bombay.

WHEREAS it is expedient to provide for the levy of a tax on the sales of motor spirit in the Province of Bombay;

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939, issued by him under section 93 of the Government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature;

26 Geo. 5, Ch. 2.

NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Sales of Motor Spirit Taxation Act, 1946.

(*2*) It shall extend to the whole of the Province of Bombay.

(*3*) This section shall come into force at once and the rest of this Act shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "consumer" means a person who purchases motor spirit for the purpose of consumption and not for resale;

(*2*) "importer" means a person who carries on the trade of importing motor spirit into the Province of Bombay;

(*3*) "licence" means a licence granted or renewed under this Act;

(*4*) "motor spirit" means any liquid or admixture of liquids which is capable of providing reasonably efficient motive power for any form of motor vehicle and which has a flashing point below 76°F;

(*5*) "prescribed" means prescribed by rules made under this Act;

(*6*) "retail sale" means a sale of motor spirit for the purpose of consumption by the person by whom or on whose behalf it is or may be purchased;

(*7*) "retail trader" means a trader who sells motor spirit for the purpose of consumption by the person by whom or on whose behalf it is or may be purchased;

(*8*) "trader" means a person who carries on the business of buying or selling motor spirit for the purpose of gain or profit and includes—

(*a*) a manufacturer, or

(*b*) an importer,

who carries on such business, and

(*c*) a broker or commission agent working in connection with such business.

The words "trade" or "trading" shall be construed accordingly.

(*9*) "wholesale trader" means a person who carries on trade for the purpose of resale and not for consumption.

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*This Act was repealed and re-enacted by Bom. 9 of 1948, s. 2.

[1] For the Statement, *see Bombay Government Gazette*, 1946, P. IV, p. 106.

Levy of tax.

3. (*1*) There shall be levied and collected a tax on the sale of motor spirit at such stage between its manufacture or import, as the case may be, and its consumption, as may be prescribed :

Provided that such tax shall not be levied on its sale at more than one such stage :

Provided further that such tax shall not be levied on the sale of motor spirit by a manufacturer or importer except on retail sale thereof.

(*2*) Subject to the provisions of section 4, the tax under sub-section (*1*) shall be levied by the Collector at the prescribed time, in the prescribed manner and at a prescribed rate not exceeding [1][12½] per cent. on the value of the sale of motor spirit.

(*3*) If any tax payable under sub-section (*1*) is not paid within the prescribed time, the Collector may in lieu thereof, recover any sum not exceeding double the amount of the tax so unpaid or any smaller sum above the amount of the tax which the Collector may think it reasonable to recover.

Assessment of tax.

4. (*1*) In cases where accounts are kept and maintained and statements submitted in the manner and at the period prescribed under section 10, the tax leviable under section 3 shall be assessed by the Collector on the value of sales as disclosed in such accounts and statements.

(*2*) In cases where no such accounts are kept and maintained or where no such statements are submitted, or where such accounts or statements are in the opinion of the Collector false or incorrect, the Collector shall make the assessment to the best of his judgment.

Government may grant refund of tax in certain cases.

5. Where motor spirit, on the sale of which to a wholesale trader the tax is levied and collected under section 3, is exported outside the Province of Bombay, the wholesale trader concerned shall, subject to such conditions as may be prescribed and upon an application made in this behalf, be entitled to a refund of the tax levied and collected in respect of such motor spirit.

Trader to take out licence.

6. (*1*) Every trader carrying on business in the sale or purchase of motor spirit shall obtain a licence from the Collector for carrying on such trade.

(*2*) Where a trader has more than one shop or place of business whether in the same town or village or in different towns or villages, he shall obtain a separate licence in respect of each shop or place of business.

(*3*) Notwithstanding anything contained in this section, a hawker shall be liable to obtain one licence, whatever may be the area of his operation.

(*4*) Every trader shall get his licence renewed before the date on which it expires.

(*5*) A license granted or renewed under the Bombay Sales Tax Act, 1939, shall be deemed to be license granted or renewed under this Act. Bom. V of 1939.

Expiry and renewal of licence.

7. (*1*) Every licence shall be in such form and subject to such conditions as may be prescribed and shall expire on the last day of the year for which it was granted, but may be renewed from year to year :

Provided that in case of any licence given to a manufacturer or importer the conditions of such licence may provide that the holder of the licence shall not sell motor spirit except to a wholesale trader or a consumer.

(*2*) The Collector may impose for the grant or renewal of every licence such fee not exceeding Rs. 2 as may be prescribed.

Explanation.—In this section "year" means the financial year.

[1] These figures were substituted for the figures "6¼" by Bom. 9 of 1948, s. 2.

No trader to carry on business without licence.

8. No trader shall carry on business in the sale or purchase of motor spirit without holding a licence under section 6.

Penalty for contravention of section 8.

9. Whoever contravenes the provisions of section 8 shall, on conviction, be punishable with fine which may extend to two thousand rupees and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Traders and other persons to keep and maintain accounts.

10. Every trader carrying on business in the sale or purchase of motor spirit shall keep and maintain accounts in the form prescribed of the value of motor spirit (manufactured or imported), sold or purchased by him and shall submit to the officer authorised in this behalf by the Collector statements in such form and at such period as may be prescribed.

Penalty for failure to keep accounts or submit returns.

11. If any trader liable under section 10 to keep accounts or to submit statements fails to keep or submit the same in the manner and at the period prescribed, he shall, on conviction, be punishable with fine which may extend to Rs. 500 and in the case of a continuing failure with an additional fine which may extend to Rs. 50 for every day during which such failure continues after conviction for the first such failure.

Power of officers to enter places where any trade is carried on, etc.

12. Any officer empowered by the Provincial Government in this behalf may, for the purposes of this Act at all reasonable times,—

(*a*) require any trader carrying on business in the sale or purchase of motor spirit to produce before him accounts or other documents or to furnish any other information ; or

(*b*) inspect the accounts of any such trader.

Suspension or cancellation of licence.

13. (*1*) Subject to such conditions as may be prescribed, the Collector may suspend or cancel a licence given under section 6—

(*a*) if any tax payable under section 3 is not duly paid by the holder of such licence ; or

(*b*) if there is any breach of any of the conditions subject to which the licence is granted ; or

(*c*) if the holder of such licence contravenes any of the provisions of this Act or the rules made thereunder.

(*2*) If the licence is suspended or cancelled for any reason, the licensee shall not be entitled to any compensation for such suspension or cancellation or to the refund of any fee paid in respect thereof.

Power of entry and search.

14. Any officer specially empowered by the Provincial Government in this behalf may enter and search, at any time, by day or by night any building, vessel, vehicle or place in which he has reason to believe that motor spirit is kept for the purposes of sale.

Searches how made.

V of 1898.

15. All searches made under section 14 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

Power of investigation.

16. (*1*) Every officer not below such rank as may be prescribed shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act.

V of 1898.

(*2*) Every such officer shall, in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence.

Offences to be bailable.

17. All offences punishable under this Act shall be bailable.

Power to compound offences.

18. (*1*) The Collector may accept from any person who has committed an offence punishable under this Act or the rules thereunder, by way of composition of such offence, a sum of money not exceeding five hundred rupees or a sum double the amount of the tax payable under section 3 in respect of any sales conducted by such person, whichever is greater.

(*2*) On the payment of such sum of money to the Collector the accused person shall be discharged, and no further proceedings shall be taken against such person in respect of such offence.

Jurisdiction to try offences.

19. No Magistrate, below the rank of a Presidency Magistrate or a Magistrate of the Second Class, shall try an offence under this Act.

Delegation of power by Collector.

20. Subject to the general or special orders of the Provincial Government the Collector may delegate any of the powers conferred upon him by or under the this act to any officer not below the rank of a Mamlatdar or Mahalkari.

Officers to be public servant.

21. All officers acting under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Protection of persons acting in good faith and limitation of suits and prosecutions.

22. (*1*) No suit, prosecution or other legal proceedings shall be instituted against any officer of the Crown for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(*2*) No suit shall be instituted against the Province of Bombay and no prosecution or suit shall be instituted against any officer of the Crown in respect of any thing done or intended to be done, under this Act unless the suit or prosecution has been instituted within six months from the date of the act complained of.

Appeal and revision.

23. (*1*) Within sixty days of the making of any order under this Act any person aggrieved by such order may appeal—

(*a*) to the Commissioner or to such officer as the Provincial Government may appoint in this behalf, if such order is passed by a Collector, and

(*b*) to the Collector, if such order is passed by any officer other than the Collector.

(*2*) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (*3*), be final.

(*3*) The Provincial Government may, at any time, call for and examine the record of any order of, or the proceedings recorded by, any officer or person for the purpose of satisfying itself as to the legality or propriety of such order passed by, or as to the regularity of such proceedings of, such officer or person and may pass such order in reference thereto as it thinks fit.

Power of Government to exempt certain traders from the Act.

24. The Provincial Government may, by rules made in this behalf, exempt any class of traders from all or any of the provisions of this Act.

Power to make rules.

25. (*1*) The Provincial Government may, for the purposes of carrying out the provisions of this Act, make rules.

(*2*) In particular and without prejudice to the generality of the foregoing provision, the Provincial Government may make rules for the following matters :—

(*a*) the stage at which, the rate and the time at which and the manner in which the tax shall be levied and collected under section 3 ;

(*b*) the conditions subject to which a wholesale trader shall be entitled to refund under section 5 ;

(*c*) the form and conditions of the licence under section 7 and the fee for the grant or renewal thereof ;

(*d*) the form of accounts to be maintained, and of statements to be submitted and the periods at which such statements are to be submitted under section 10 ;

(*e*) the conditions subject to which a licence may be suspended or cancelled under section 13 ;

(*f*) the rank of officer empowered to investigate offences to be prescribed under section 16 ; and

(*g*) the conditions subject to which any class of traders shall be exempted from all or any of the provisions of this Act under section 24.

(*3*) Any rule made under this section may provide that any person contravening any such rule shall be liable on conviction to a fine which may extend to Rs. 50.

(*4*) Rules made under this section shall be subject to the condition of previous publication and shall be published in the *Official Gazette*.

Licence fee and other dues to be recoverable as arrears of land revenue.

26. All sums payable as taxes, fees or penalties under section 3 or 7 shall be recoverable as arrears of land revenue.

Transitional provisions.

27. Notwithstanding the repeal of the Bombay Sales Tax Act, 1939,—

(*a*) such repeal shall not affect the liability of any person to pay any sum due from him under the said Act or any right acquired or the validity or invalidity of anything already done thereunder ; and

(*b*) all proceedings commenced, officers empowered or authorised, all powers conferred, rules made and orders issued under any of the provisions of the Bombay Sales Tax Act, 1939, shall be continued, and, so far as may be, be deemed to have been respectively commenced, empowered or authorised, conferred, made or issued under this Act.

Bom. V of 1939.

Bom. V of 1939.